

STATE OF MICHIGAN  
COURT OF APPEALS

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OXFORD BANK,

Plaintiff-Appellant,

v

VICKI S. ROHLMAN,

Defendant-Appellee.

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UNPUBLISHED  
February 22, 2007

No. 267784  
Lapeer Circuit Court  
LC No. 04-034594-CK

Before: Meter, P.J, and O’Connell and Davis, JJ.

DAVIS, J. (*concurring*).

I agree with the lead opinion. I write separately only to emphasize two points.

First, for the sake of clarity, I note that the trial court correctly held that under MCL 440.4302, written notice would have been required. See *Mut S & L v Nat’l Bank of Detroit*, 185 Mich App 591, 595; 462 NW2d 797 (1990). However, under the correct statute, MCL 440.4207, written notice is not required. In the absence of such a requirement, the notice given need only be sufficient to bring the matter to the attention of the other party. See MCL 440.1201(25) and MCL 440.1201(26)(a). Therefore, the oral notice given by plaintiff was adequate here.

Second, as the lead opinion notes, defendant has alleged that, approximately two weeks after she deposited the check and two weeks before the notice of dishonor, plaintiff affirmatively initiated contact with her and informed her that the funds had cleared. If this is true, I believe it has significant implications to defendant’s argument that plaintiff breached its duty of care.

The UCC does not define the term “cleared.” However, both Black’s Law Dictionary and the Random House Webster’s College Dictionary indicate that the term means the funds were *actually paid or authorized*. A reasonable bank customer could interpret this as a reliable statement by her bank that the check had been honored and that she could therefore utilize the funds without further concern. Furthermore, a reasonable bank customer could conclude that the bank was the party best able to verify the reliability of the check and that the bank had done so.

The UCC generally defines “ordinary care” as

observance of reasonable commercial standards, prevailing in the area in which the person is located, with respect to the business in which the person is engaged. In the case of a bank that takes an instrument for processing for

collection or payment by automated means, reasonable commercial standards do not require the bank to examine the instrument if the failure to examine does not violate the bank's prescribed procedures and the bank's procedures do not vary unreasonably from general banking usage not disapproved by [article 3] or article 4. [MCL 440.3103(1)(g); MCL 440.4104(3).]

A collecting bank like plaintiff is considered to exercise "ordinary care" in presenting an instrument or transmitting notice of dishonor by "taking proper action before its midnight deadline following receipt of an item, notice, or settlement." MCL 440.4202. However, plaintiff's alleged communication, which could have induced defendant to rely on an ostensibly expert affirmation that the funds were valid and available for use, took place well before any event giving rise to a "midnight deadline" occurred. Unless a provision of the UCC specifies otherwise, general principles of law and equity remain applicable. MCL 440.1103; *Conagra, Inc v Farmers State Bank*, 237 Mich App 109, 131; 602 NW2d 390 (1999).

I believe plaintiff would have been entirely within its rights to take as long as necessary to determine the reliability of the check. Instead, plaintiff allegedly sought out defendant and induced her to believe that the check was reliable when, in fact, it was not, only to notify her two weeks later that the check had actually been dishonored. Under general principles of law and equity, I believe this raises at least a possibility that plaintiff did not act reasonably and did not fulfill its duty of care; moreover, plaintiff may have breached its standard of care well before the propriety of its notice of dishonor became an issue.

I understand that this issue is only an allegation at this stage of proceedings, and no evidence or argument has been taken on the matter. I write only to emphasize the lead opinion's observation that the issue of plaintiff's exercise of due care has not been resolved in the trial court. In all other respects, I concur.

/s/ Alton T. Davis